

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY



(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 01 MAR 2006

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Applicant's or agent's file reference 43780	FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/EP2005/003139	International filing date (day/month/year) 24.03.2005	Priority date (day/month/year) 31.03.2004	
International Patent Classification (IPC) or national classification and IPC B01F11/00, B01F15/00, G01N21/00			
Applicant PASSONI, Giovanni			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau) a total of 6 sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input checked="" type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 27.10.2005		Date of completion of this report 28.02.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Brunold, A Telephone No. +49 89 2399-7838 	

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2005/003139

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

3, 4 as originally filed
1, 1a, 2, 5 as amended (together with any statement) under Art. 19 PCT

Claims, Numbers

1-8 as amended (together with any statement) under Art. 19 PCT

Drawings, Sheets

1/1 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	5-8
	No: Claims	1-4
Inventive step (IS)	Yes: Claims	5-8
	No: Claims	1-4
Industrial applicability (IA)	Yes: Claims	1-8
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

and / or

2. Non-written disclosures (Rule 70.9)

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**INTERNATIONAL PRELIMINARY
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(SEPARATE SHEET)**

International application No.

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Re Item V Reasoned statement under Rule 43bis1(a)(i) PCT with regard to novelty,
inventive step or industrial applicability;
Citations and explanations supporting such statement

1. STATE OF THE ART

Reference is made to the following documents:

D1:	JP 58 191955 A	D2:	JP 56 094244 A
D3:	JP 04 130248 A	D4:	US 2002/042141 A1
D5:	US-A-4 372 683	D6:	EP-A-0 494 846
D7:	US-A-4 265 544	D8:	JP 2004 109051 A
D9:	JP 2001 249073 A	D10:	JP 2001 218755 A

2. NOVELTY [Art. 33(2) PCT], INVENTIVE STEP [Art. 33(3) PCT]

2.1 The lack of clarity as discussed under item VIII of present international preliminary report on patentability notwithstanding, the subject-matter of **independent claim 1** is not new in the sense of Art. 33(2) PCT, and therefore the criteria of Art. 33(1) PCT are not met. D1 discloses (references in parentheses applying to D1) a powered test-tube agitation device

- including a plate having a rest (gear 5) for a test-tube (test-tube 1) to be agitated and a powered mechanism (motor 10) operating the plate in agitation (abstract),

characterized in that the device comprises

- an optical detection means for optical detection of the entry of an object into a predetermined zone above the plate, the optical detection means being operatively connected to the powered mechanism to activate operation thereof

(abstract; first projector 11a).

In addition it is noted that D1 clearly discloses a powered test-tube agitation device, cf. D1 in the abstract: "...a motor 10 is properly started and a gear 5 is rotated [...], the test-tube 1 is rotated [...] to agitate...". Furthermore, the feature concerning the "...detection of the entry of an object into a predetermined zone above the plate..." seems also to be present in D1, at least implicitly, since practically the reducing of illuminance incident onto photodetector 12 will start before a test-tube has been fully inserted into gear 5, due to the entry of the bottom of said test-tube in the beam of light emitted by the first projector 11a directed to photodetector 12.

2.2 Furthermore, the lack of clarity as discussed under item VIII of present report notwithstanding, the subject-matter of **claims 2 to 4** do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT with respect to novelty and/or inventive step, and which could render the subject-matter of claim 1 new (Art. 33(2) PCT) and inventive (Art. 33(3) PCT).

2.3 However, the lack of clarity as discussed under item VIII of present report notwithstanding, the combination of the features of **dependent claims 5 to 8** is supposed to be neither known from nor rendered obvious by the available prior art.

3. INDUSTRIAL APPLICABILITY [Art. 33(4) PCT]

3.1 For the assessment of the amended claims 1 to 8 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The present application is considered to be industrially applicable, Art. 33(4) PCT, Rule 67.1(i)-(vi) PCT, cf. also Guidelines PCT/GL/ISPE/1 14.01-14.06.

Re Item VI Certain documents cited

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- 4.1 As a precautionary measure, the applicant is informed that document D8 indicated in the international search report as a P-document might be regarded as state of the art during a further national proceeding.

Re Item VIII

Certain observations on the international application

- 5.1 The feature "...for optical detection of the entry of an object into a predetermined zone above the plate..." in the apparatus claim 1 relates to a method of using the apparatus rather than clearly defining the apparatus in terms of its technical features. The intended limitations are therefore not clear from this claim, contrary to the requirements of Art. 6 PCT.
